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final agreement of the parties, and the burden is on complainant to overcome this presumption by the clearest and most satisfactory proof.

[Ed. Note. For other cases, see Reformation of Instruments, Cent. Dig. § 154; Dec. Dig. § 43.* 11 Va.-W. Va. Enc. Dig. 905.]

3. Assignments for Benefit of Creditors (§ 297*)—Rights of Creditors—Waiver.—Nonresident creditors of an assignor for the benefit of creditors did not waive their rights to distribution under the assignment, where they did not know that their claims were secured by the assignment until immediately prior to filing their demand for participation.

[Ed. Note.—For other cases, see Assignments for Benefit of Creditors, Cent. Dig. § 871; Dec. Dig. § 297.* 1 Va.-W. Va. Enc. Dig. 838; 13 id. 637.

Judgment affirmed. Cardwell, J., absent.

STRICKLAND *v.* FAIRFAX.

Sept. 9, 1909.

[65 S. E. 477.]

Brokers (§ 39*)—Right to Commissions.—Where a broker performed services towards leasing property, but before he had leased it he told the owner he would charge him nothing for his services, he was entitled to no compensation, either for the subsequent or the prior services, whether the prior services were rendered without a contract therefor, or under a contract to effect a lease, in which latter case no commission would be earned till the lease was effected.

[Ed. Note.—For other cases, see Brokers, Dec. Dig. § 39.* 2 Va.-W. Va. Enc. Dig. 638, et seq.]

Judgment reversed and remanded for new trial. Keith, P., absent.

VIRGINIA IRON, COAL & COKE CO. *v.* MUNSEY.

Sept. 9, 1909.

[65 S. E. 478.]

1. Appeal and Error (§ 1061*)—Harmless Error—Denial of Amendments.—Refusal to allow an amendment to the grounds of demurrer to the evidence by adding another ground was not prejudicial to defendant, where it had a right to and did make the other ground under the grounds of demurrer filed.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 1061.* 1 Va.-W. Va. Enc. Dig. 587, et seq.]

2. Trial (§ 139*)—Demurrer to Evidence.—If, under the evidence,

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.